Datatreasury Corporation v. Wells Fargo & Company et al Doc. 82

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATATREASURY CORP. Plaintiff, v. WELLS FARGO & CO., et al., Defendant.	:	No. 2-06CV-72 MOTION TO DISMISS

MOTION OF DEFENDANT
THE CLEARING HOUSE PAYMENTS COMPANY L.L.C.
JOINING IN CO-DEFENDANTS' MOTION TO DISMISS

COMES NOW Defendant The Clearing House Payments Company L.L.C. ("TCH"), to respectfully submit the instant motion joining in the Motion to Dismiss filed by co-defendants Bank of America Corporation, et al, et al (the "Motion to Dismiss"), subject to the limitations set forth below. In support of its motion, TCH states as follows.

On March 28, 2006, plaintiff DataTreasury Corporation ("DT") filed its First Amended Complaint in this matter (the "Complaint"). The Complaint names fifty-six separate defendants. DT's purported allegations of infringement fall woefully short of the requisite pleading standards required by Rule 8 of the Federal Rules of Civil Procedure. For the reasons set forth in the Motion to Dismiss, TCH believes that the First Amended Complaint is fatally flawed and should be dismissed by this Court. TCH joins in the Motion to Dismiss rather than filing its own motion separately to minimize the burden on this Court, which might otherwise be faced with fifty-six separate motions directed at DT's Complaint.

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TCH joins the Motion to Dismiss subject to the following qualifications. The Complaint attempts to allege that TCH infringes the following patents: U.S. Patent Nos. 5,265,007; 5,717,868; 5,910,988; and 6,032,137.[1] TCH joins the Motion to Dismiss as that Motion is directed at DT's insufficient allegations regarding the Randle Patents. With respect to the Ballard Patents, TCH has already answered those allegations in the case DT filed against TCH on March 4, 2004 (the "Initial Litigation"). In addition, this Court has, by order dated May 24, 2006, consolidated the Initial Litigation with this case.

In its Complaint, DT also asserts claims against Small Value Payments Company ("SVPCo"). However, as TCH has represented to this Court and to DT, SVPCo no longer exists, having merged into TCH as of July 2004. TCH has been and is the successor-in-interest to SVPCo. Accordingly, SVPCo does not exist as a legal entity and is not able to respond separately to the Complaint.[2]

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[1]U.S. Patent Nos. 5,910,988 and 6,032,137 will be referred to collectively as the "Ballard Patents." U.S. Patent Nos. 5,265,007 and 5,717,868 will be referred to collectively as the "Randle Patents."

[2]TCH has been conferring with DT to reach an agreement whereby DT will voluntarily dismiss SVPCo from this lawsuit.

In light of the foregoing, and subject to the qualifications set forth herein, TCH respectfully requests that this Court grant the Motion to Dismiss and such other and further relief this Court deems necessary.

Dated: June 1, 2006

Respectfully submitted,

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Attorneys for Defendant The Clearing House Payments Company L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing instrument was served upon all counsel of record in the above entitled and numbered cause on this the 1st day of June, 2006.

__X___ Via ECF

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